



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2015-0934]

RIN 1625-AA09

Drawbridge Operation Regulation; Saginaw River, Bay City, MI

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending its regulations regarding drawbridge operations in Saginaw River, Bay City, MI. In a final rule entitled, “Drawbridge Operation Regulation; Saginaw River, Bay City, MI” that appeared in the Federal Register on April 12, 2012, the Coast Guard revised the drawbridge opening schedules for the Saginaw River and inadvertently excluded the CSX Railroad Bridge and the Grand Trunk Western Railroad Bridge. This document amends the regulations by adding these two bridges back into the regulations.

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type [USCG-2015-0934] in the “SEARCH” box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Mr. Lee Soule, Bridge Management Specialist, Ninth Coast Guard District; telephone (216) 902-6085, e-mail lee.d.soule@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
E.O.	Executive Order
FR	Federal Register
NPRM	Notice of proposed rulemaking
SNPRM	Supplemental notice of proposed rulemaking
Pub. L.	Public Law
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the publishing of the original final rule [Docket No. USCG-2011-1013] omitted regulatory language that was published in the previous rulemaking NPRM, but was inadvertently left out of the final rule published on April 12, 2012. Therefore, it is unnecessary to issue a rule without prior notice and opportunity to comment because the public was already provided an opportunity to comment on these provisions, had no objections during the previous comment period, and the operation of the

bridges is consistent with this rule. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective in less than 30 days after publication in the Federal Register. The regulation change has already taken place and the correction of the regulation will not affect mariners currently operating on this waterway. Therefore, a delayed effective date is unnecessary.

The NPRM for the regulations, published on December 8, 2011 (76 FR 76637), proposed to revise §117.647. At the end of the rule, the following characters were included in the NPRM: “*****.” These characters indicated the Coast Guard’s intention to retain paragraphs (c) and (d) which were included in the regulations at the time of the NPRM regarding the CSX Railroad Bridge located at mile 18.0 over the Saginaw River and the Grand Trunk Western Railroad Bridge located at mile 19.2 of the Saginaw River. However, the final rule, which was published on April 24, 2012 (77 FR 21864), did not preserve these paragraphs. The purpose of this amendment is to ensure that the regulation accurately reflects the original intention and inclusion of these inadvertently omitted paragraphs.

III. Discussion of Final Rule

The purpose of this rule is to correct 33 CFR 117.647 in the Code of Federal Regulations.

As noted above, this rule restores language that was previously excluded. This rule is correcting the regulation in 33 CFR 117.647 by restoring the listing of drawbridges allowed to remain closed. The CSX Railroad Bridge located at mile 18.0 of the Saginaw River and the Grand Trunk Western Railroad Bridge located on mile 19.2 of the Saginaw River will retain their current operating schedule. This rule will not affect waterway traffic or land transportation needs because the status of the two drawbridges has been in effect

since 1994.

IV. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive Orders, and we discuss First Amendment rights of protesters.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget. The Coast Guard does not consider this rule to be “significant” under that Order because it is an administrative change that corrects inadvertently omitted language that is consistent with the current operation of the bridges. Therefore, this rule does not affect the way vessels operate on the waterway.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a

substantial number of small entities. While some owners or operators of vessels intending to transit the bridge may be small entities, for the reasons stated in section IV.A above, this final rule would not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Government

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have

determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321-4370f), and have made a determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule simply promulgates the operating regulations or procedures for drawbridges. This action is categorically excluded from further review, under figure 2-1, paragraph (32)(e), of the Instruction.

Under figure 2-1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the “For Further Information Contact” section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; and Department of Homeland Security Delegation No. 0170.1.

2. In §117.647, add paragraphs (c) and (d) to read as follows:

§117.647 Saginaw River.

* * * * *

(c) The draw of the CSX railroad bridge, mile 18.0, need not be opened for the passage of vessels. The owner shall return the draw to an operable condition within a

reasonable time when directed by the District Commander to do so.

(d) The draw of the Grand Trunk Western railroad bridge, mile 19.2, need not be opened for the passage of vessels.

Dated: February 10, 2016.

J. E. Ryan,
Rear Admiral, U. S. Coast Guard,
Commander, Ninth Coast Guard District.
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